

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF LOUISIANA  
LAKE CHARLES DIVISION

LARRY W. ASHWORTH

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CIVIL ACTION NO. 2:20-CV-00053

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VERSUS

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JUDGE JAMES D. CAIN, JR.

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INTERNATIONAL PAPER COMPANY,  
ET AL

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MAGISTRATE JUDGE KATHLEEN KAY

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**IP'S MOTION FOR LEAVE TO FILE A SUR REPLY IN OPPOSITION TO  
PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF MODIFIED  
SETTLEMENT WITH OCCIDENTAL AND ANADARKO**

NOW INTO COURT through undersigned counsel comes Defendant, International Paper Company ("IP"), who respectfully moves this Honorable Court for an Order granting leave to file a Sur Reply in Opposition to Plaintiff's Motion for Preliminary Approval of Modified Settlement (ECF 147)<sup>1</sup> for the following reasons:

On September 5, 2023, Plaintiff filed his original Motion for Preliminary Approval of Settlement ("Motion") (ECF 105). Additional briefing by all parties was filed in relation to the Motion (ECF 122, ECF 128, ECF 133). On October 12, 2023, a hearing was held on the Motion. Following the hearing, Plaintiff filed a Motion for Preliminary Approval of Modified Settlement on November 9, 2023 ("Modified Motion") (ECF 147). On November 27, 2023, IP and BNSF Railway Company filed an Opposition to the Modified Motion ("Opposition") (ECF 151). On December 4, 2023, Plaintiff and Defendants, Occidental Petroleum Corporation and Anadarko Petroleum Corporation, filed Reply Memorandums in Further Support of the Modified Motion ("Replies") (ECF 153, ECF 154).

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<sup>1</sup> Per LR 7.6, IP sought consent of opposing party prior to seeking leave. Opposing counsel requested the following exact response be included: "If the Court finds you have standing to further object and the Court agrees to give you more time than the 7 days we were allowed for our reply, we do not object to you filing a Sur Reply."

The Replies contain wholly new alleged facts and arguments not previously raised in *any* briefing, including never-before-mentioned contaminants and a do-over expert affidavit, replete with flagrant misrepresentations, internal contradictions, and unsustainable overreaches. The Court should strike the Replies because they flout bedrock Fifth Circuit (if not universal) precedent prohibiting the raising of new arguments for the first time in a reply. *E.g., Thompson v. Link*, 2022 WL 175547 (5<sup>th</sup> Cir. Jan. 15, 2022). At the very minimum, the Court should grant IP an adequate opportunity to respond to the new arguments by accepting IP's Sur Reply attached hereto. *Redhawk Holdings Corp. v. Schrieber*, 836 F. App'x 232, 235 (5th Cir. 2020).

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on December 12, 2023, I electronically filed the foregoing with the Clerk of Court by using the CM/ECF system, which will send a notice of electronic filing to all known counsel of record. A copy has also been served on all known counsel of record and/or any unrepresented party not enrolled in the CM/ECF system by U.S. Mail, certified mail, fax, e-mail, and/or hand delivery.

/s/ Daniel J. Mulholland  
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